

SET FINE APPLICATIONS BEST PRACTICES MANUAL

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MUNICIPAL SET FINE APPLICATIONS

This paper is intended to give a general overview with respect to the set fine application process. It is not an official Ministry document and only reflects the view of the author.

RELEVANT LEGISLATION

The definition for “set fine” is found within section 1(1) of the *Provincial Offences Act* R.S.O. 1990, c. P. 33. The term is defined as follows:

“**set fine**” means the amount of fine set by the Chief Justice of the Ontario Court of Justice for an offence for the purpose of proceedings commenced under Part I or II.

The meaning of “offence” is also found within section 1(1) of the *Provincial Offences Act*:

“**offence**” means an offence under an Act of the Legislature or under a regulation or by-law made under the authority of an Act of the Legislature.

A municipal bylaw can create an “offence” for the purpose of section 1(1) of the *Provincial Offences Act* (see *R. v. Webster* (1981), 10 M.V.R. 310 (Ont. Dist. Ct.)).

While it is somewhat redundant with the definition of set fine contained in section 1(1) of the *Provincial Offences Act*, section 6 of the R.R.O, 1990, Reg. 200 [as amended O. Reg 505/93; O. Reg. 498/94] states further:

For the purpose of proceedings under Part I or Part II of the Act, the amount of fine set by the court for an offence is such amount as may be set by the Chief Judge of the Ontario court (Provincial Division).

The authority for a Regional Senior Justice to impose a set fine (rather than the Chief Justice, as suggested by a plain wording interpretation of s. 1 of the *Provincial Offences Act*), derives from section 36(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, which states as follows:

36(2) *A regional senior judge of the Ontario Court of Justice shall, subject to the authority of the Chief Justice of the Ontario Court of Justice, exercise the powers and perform the duties of the Chief Justice of the Ontario Court of Justice in his or her region.*

THE DISTINCTION BETWEEN PART I AND II PROVINCIAL OFFENCES ACT OFFENCES

Part I Provincial Offences Act offences are, in essence anything, which is not a Part II offence. Section 14 of the *Provincial Offences Act* defines what offences fall within Part II as follows:

14. In this Part, “parking infraction” means any unlawful parking, standing or stopping of a vehicle that constitutes an offence. 1992, c. 20, s. 1 (1).

While the Provincial Offences Act does not afford a definition for “vehicle”, guidance may be taken from the *Highway Traffic Act, R.S.O. 1990, Ch. H. 8*. Section 1(1) of the *Highway Traffic Act* provides:

“motor vehicle” includes an automobile, motorcycle, motor assisted bicycle unless otherwise indicated in this Act, and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car, or other motor vehicles running only upon rails, or a motorized snow vehicle, traction engine, farm tractor, self-propelled implement of husbandry or road-building machine within the meaning of this Act; and

“vehicle” includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car

If the offence in question does not fit within the parameters of section 14, having regard to the definitions for “motor vehicle” and “vehicle”, then it is, in all likelihood a Part I offence. It is important to understand this distinction before preparing the set fine application, as different considerations apply when preparing the set fine schedule (see below).

PENALTIES FOR SET FINES

Parts I and II of the *Provincial Offences Act* govern certificate of offence proceedings. This mode of proceedings is less serious than Part III proceedings, commenced by the laying of an Information. Penalties under Part I proceedings are regulated by section 12 of the *Provincial Offences Act*.

12(1) Where the penalty prescribed for an offence includes a fine of more than \$1,000 or imprisonment and a proceeding is commenced

under this Part, the provision for fine or imprisonment does not apply and in lieu thereof the offence is punishable by a fine of not more than the maximum fine prescribed for the offence or \$1,000, whichever is the lesser. R.S.O. 1990, c. P.33, s. 12 (1); 2009, c. 33, Sched. 4, s. 1 (18).

The effect of this provision is to limit fines under Part I to a maximum of \$1000.

COURT COSTS

Please note that as of June 15, 2005, the set fine amounts listed on all Part I set fine schedules should not include the \$5 court costs. That amount (along with the victim surcharge) is now added when the ticket is actually being issued.

(a) Heading change

As of June 15, 2005, all reference to costs will be removed from the heading and only the amount of the set fine will be posted in the consolidated Set Fine Schedules under the heading "Set Fine".

(b) Completion of Certificate of Offence

Form Provided by Regulation. Costs are included in the first box with set fines. This figure is currently in the consolidated schedules, but will cease to be there on June 15, 2005, when costs will be deleted. Since the victim fine surcharge is based on the amount of the set fine alone, \$5.00 should be subtracted before the victim fine surcharge is calculated.

Varied form. Costs have been shifted to the second box. Only the set fine goes in the first box. This is the amount that will be shown on the consolidated schedules as of June 15, 2005. The victim fine surcharge is calculated on this amount. The set fine, costs and victim fine surcharge together then make up the total payable that goes in the second box. Although the two forms have different amounts in the first box, they should both have the same amount in the total payable box.

The use of the varied form avoids the potential confusion with respect to the amount of the set fine which could arise in the form provided by regulation.

Victim fine surcharges: please see O.R. 161/00

DRAFTING BYLAWS: SOME KEY POINTS

➤ **Include the Authority**

- ◇ There must be legislative authority for a municipality to enact offences with respect to certain specified conduct. Most often, the pre-amble to a by-law makes reference to the authority to enact the by-law. Where this is not done within the by-law, reference to the authority should be made in the covering letter.
- ◇ While the *Municipal Act* is the main source of authority for municipal by-law making power, various other provincial legislation provides authority as well; for instance: *Environmental Protection Act R.S.O. 1990, c. E. 19, as amended*; *Motorized Snow Vehicles Act R.S.O. 1990, c. M. 44*; *Highway Traffic Act R.S.O. 1990, c. H. 8, as amended*.
- ◇ Where offences coincide or conflict with either provincial or federal legislation, the higher level of legislation prevails and set fines cannot be approved.

➤ **Creating the Offences in the bylaw**

In order for an offence to be created, the wording of the by-law **must clearly impose a duty or a prohibition** on a person or group of persons.

- ◇ A specific prohibition identifies the group of persons who shall not engage in certain specified conduct. For instance, “*no taxi-drivers shall...*”
- ◇ A general prohibition applies to everyone equally. For instance, “*no person shall...*”
- ◇ Duties require certain specified conduct to occur. For instance, “*Every person shall...*”

➤ **Amending sections within an existing bylaw**

When amending an existing section of a bylaw, it is important to say in the amending bylaw that this particular section is being ‘*deleted and replaced*’ by the new wording. If you only say “by adding the following section”, you could end up with two sections with the same number.

➤ **Number the bylaw sections**

Remember to assign section numbers in the bylaw. Without it, you will find it hard to itemize the offence creating provisions.

➤ **General Penalty Provisions:**

- ◇ All by-laws must contain a general penalty section. Bylaws, which do not contain a general penalty section, **must** be amended to include one.
- ◇ With few exceptions, the penalty provision must accord with s. 61 of the *Provincial Offences Act*, which allows for a maximum fine of \$5000 for breach of a Part I or Part II offences. To avoid having to amend the bylaw if the maximum fine is raised, the following wording is recommended:

Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended

- ◇ Do not mention a minimum amount in the penalty section. The Regional Senior Justice has the right to lower the amounts requested by the municipality.
- ◇ Set fines are collected under the *Provincial Offences Act* so the general penalty section must reference the POA.

THE APPLICATION PROCESS

Where to send the Application:

Kerry Lee Thompson
Crown Counsel
Ministry of the Attorney General
Crow Law Office-Criminal
720 Bay Street, 10th Floor
Toronto, Ontario
M5G 2K1

What to Include in the Application Package:

- ***Covering Letter***
 - ◇ Please indicate how many applications are included in the package (each schedule of set fines forms a single application);
 - ◇ Reference each by-law included in the package, including an indication as to whether or not it has been amended;
 - ◇ Set out what the municipality is asking for (for instance, whether they are seeking fines for the first time or increasing fines already in place)
 - ◇ If you are seeking to increase fines for some of the offences listed on the set fine schedule, please indicate which items are affected;
 - ◇ Itemise the documents enclosed in the package;
 - ◇ All cover letters must be on some form of letterhead, which contains your contact details (mailing address, a fax number, a phone number and, where possible, an email address).

- ***Bylaws, Municipal Codes, Amending Bylaws and Acts - What to send:***
 - ◇ **NOTE:** All bylaws must be fully passed and must be certified by the clerk as a true copy and the certification itself must be original (therefore, a faxed copy is inadequate)

 - ◇ **Fines under a new bylaw?** Please send a signed and certified copy of the fully passed parent bylaw (A single copy of the by-law will suffice);

 - ◇ **Fines under a Municipal Code?** Please only send the Chapters relevant to the application;

- ◇ **Fines under a bylaw which has been amended?** Please send signed and certified and copies of both the parent bylaw and the amending bylaw. Both should be fully passed.
 - ◇ **What if there are numerous amending bylaws?** An office consolidation is preferred. It should be certified by the Clerk. Alternatively, you can send the most relevant amending bylaws, particularly those which create any new offences being added to an existing schedule.
 - ◇ **What if you're seeking fines under an Act?** Please provide us with a copy of the Act.
 - ◇ **What if you're adding offences to an existing schedule or seeking increased fines?** The relevant bylaw, Code, Chapters, amending bylaw must still be provided. Our office does not keep these documents on file.
- ***Set fine schedules***
- ◇ Two copies of the set fine schedule must be enclosed:
 - a copy with all the set fines amounts (and early voluntary payment, where applicable) listed; and,
 - a second copy with the set fine (and early voluntary payments) amounts left out.
 - ◇ If a copy of the set fine schedule is already attached to the bylaw, a separate copy of the schedule must be included in the package;
 - ◇ Set fine schedules do **not** have to be certified
 - ◇ Sample copies of the set fine schedule are included in these materials for your reference. Please note that there are differences between Part I and Part II set fine schedule, the most important of which is that an early voluntary payment is available for all Part II offences.
- ***Written Reasons***
- Where the municipality is requesting set fines of \$1,000 (for Part I offences) or \$500 (for Part II offences), written reasons should be provided as to why the maximum fine is being sought for those particular offences. The Regional Senior Justice will consider them when deciding whether or not to lower the fines.
- ***Existing Judge's Orders***
- Where the municipality is seeking to add offences to an existing set fine schedule or increasing fines from those previously

ordered, please remember to enclose a copy of the judge's order with the approved set fine schedule attached.

SET FINE SCHEDULES

a] Part I Set Fine Schedules

- ◇ **Part I offences** are everything except for parking, stopping and standing
- ◇ The amount listed on the schedule should only be the set fine. Court costs are added when the ticket is issued.
- ◇ An early voluntary payment is not allowed for Part I offences.

b] Part II Set Fine Schedules

The Part II set fine schedule is almost the same as the Part I set fine schedule, with a few exceptions:

- ◇ **Part II offences** are parking, stopping and standing.
- ◇ **Early voluntary payment:**
 - An early voluntary payment is available for all Part II offences.
 - The municipality is under no obligation to impose an early voluntary payment
 - If early voluntary payment isn't being sought, then that column may be omitted from the set fine schedule;
 - The defendant must be given a minimum of seven (7) days in which to pay an early voluntary payment;
 - Where an early voluntary payment is imposed, the payment *should not be less than two-thirds the set fine amount*. For instance, for a set fine of \$30, the early voluntary payment cannot be less than \$20.
- ◇ **Court costs** are not applicable to Part II offences.

c] The heading to the Schedule

- The heading to the set fine schedule should read:

Municipality/Township/Town/City of _____
Part I/ Part II Provincial Offences Act
Bylaw no. XX-YY: Parking

- If the bylaw has been amended, then it should read:

Municipality/Township/Town/City of _____
Part I/ Part II Provincial Offences Act
Bylaw no. XX-YY, as amended by bylaw GG-HH: Parking

d] Numbering of offences: All offences listed on the set fine schedule should be numbered chronologically;

e] Page numbering: Where the set fine schedule has more than one page, those pages should be numbered as “page 1 of ___”, etc.

f] Headings to columns should be as follows:

Part I Schedule:	Item #	
	Column 1	Short Form Wording
	Column 2	Provision Creating or defining offence
	Column 3	Set fine

Part II Schedule:	Item #	
	Column 1	Short Form Wording
	Column 2	Provision Creating or defining offence
	Column 3	Early voluntary payment (payable within 7 days)
	Column 4	Set fine

g] Short Form Wordings

- ◇ The wording used to describe the subject offence should be concise but accurate;
- ◇ They should reflect the wording used in the section which creates the offence (offence creating provision) within the bylaw;
- ◇ The Short Form Wording states the actual offence committed by the person or group of persons.
 - *Bylaw says: No person shall wear red on Mondays*
 - *Short form wording will be: Wear red on Mondays*
- ◇ If the Short Form Wording is too vague (for instance: “fail to comply with provisions of this bylaw”), a set fine cannot be approved;

- ◇ Each item listed on the schedule should only reference one offence;
- ◇ Where a section of the by-law has subsections, each offence created by each subsection should be listed separately on the set fine schedule.

h] Offence Creating Provisions

- ◇ There can only be one section of the by-law listed as the offence creating provision for each item.
- ◇ All offence creating provisions must come from one bylaw. There cannot be multiple bylaws cited on a single set fine schedule. Each bylaw should have its own schedule.

i] Set fines

- ◇ The maximum set fine available is \$1,000 for Part I offences and \$500 for Part II offences. However, it is rare that a maximum set fine is approved.
- ◇ Where high fines are being sought, please include written reasons why you are seeking such high fines. It will be forwarded for the Regional Senior Justice's consideration.
- ◇ Re: Part I set fines, the amount listed on the set fine schedule will be considered as the fine. Court costs are added when the ticket is issued.
- ◇ Only a single set fine amount may be requested for each offence;
- ◇ Graduated set fines are not permitted.

j] The penalty citation at the bottom of the schedule:

- ◇ All by-laws must contain a general penalty section. Bylaws, which do not contain a general penalty section, **must** be amended to include one.
- ◇ At the bottom of both the Part I and II set fine schedules, reference must be made to the general penalty provision. For instance,

"NOTE: the general penalty provision for the offences listed above is section ____ of the Bylaw ____, a certified copy of which has been filed".

- ◇ Was the by-law amended? Then the citation should read:

"NOTE: the general penalty provision for the offences listed above is section ____ of the Bylaw ____, as amended a certified copy of which has been filed".

- ◇ Is the penalty outdated? Does it still refer to a maximum fine of \$2000? As an alternative, until the by-law can be amended, please use the following citation at the bottom of the set fine schedule instead:

NOTE: The penalty provision for the offences indicated above is section 61 of the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.

k] Adding new items to an existing set fine schedule (Consolidated schedules):

- ◇ Where the municipality is seeking to add new offences to an existing set fine schedule, a **consolidated set fine schedule** (all the previously approved Short Form Wordings + the new Wordings) should be provided;
- ◇ Where the schedule consists of multiple pages, the new items should be highlighted in bold or asterisked to make it easier to identify.

SUMMARY

- 1] Did you include two stand-alone copies of the set fine schedule: one with the set fine amounts filled in and a second with the set fine amounts left out?
- 2] Is the bylaw fully passed? Is it signed and certified as a true copy?
- 3] Do the headings to the columns read as follows?

Part I Schedule:	Column 1	Short Form Wording
	Column 2	Provision Creating or defining offence
	Column 3	Set fine

Part II Schedule:	Column 1	Short Form Wording
	Column 2	Provision Creating or defining offence
	Column 3	Early voluntary payment (payable within 7 days)
	Column 4	Set fine

- 4] As of June 15, 2005, the set fine amounts listed on all Part I set fine schedules should not include the \$5 court costs.
- 5] Is the penalty section up to date? Please ensure that the wording of your general penalty provision within the by-law meets provincial standards, which is as follows:

"Every person who contravenes any provision of this by-law is guilty of an offence and on conviction is liable to a fine as provided for in the Provincial Offences Act R.S.O. 1990, c. P. 33".

If the wording does not meet provincial standards, then as an alternative until the by-law can be amended, please use the following citation at the bottom of the set fine schedule instead:

"NOTE: The penalty provision for the offences indicated above is section 61 of the Provincial Offences Act, R.S.O. 1990, c. P. 33".

TOWNSHIP OF WINTER

PART I Provincial Offences Act

By-law #YY: Fall Back By-law

Page 1 of X

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set Fine
1			\$
2			\$
3			\$

"NOTE: The penalty provision for the offences indicated above is section X of by-law no. YY, a certified copy of which has been filed".

TOWNSHIP OF WINTER

PART II Provincial Offences Act

By-law #YY: Fall Back By-law

Page 1 of X

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Voluntary payment payable within 7 days	COLUMN 4 Set Fine
1			\$	\$
2			\$	\$
3			\$	\$

"NOTE: The penalty provision for the offences indicated above is section X of by-law no. YY, a certified copy of which has been filed".